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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,376	01/30/2004	Edward Reiss	1189P2755	6525

23504 7590 03/02/2007
WEISS & MOY PC
4204 NORTH BROWN AVENUE
SCOTTSDALE, AZ 85251

EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/02/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/768,376

Applicant(s)

REISS ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reiss et al. (US 5,743,895) and further in view of Cook et al. (US 5,562,740).

With respect to claim 1, Reiss et al. (hereinafter "Reiss") discloses a disposable diaper comprising an exterior layer comprising a non-woven material having a planar, soft, cloth-like surface layer, a core layer comprising a wood pulp, a containment layer coupled to a first side and a second side of the core layer, a distribution layer coupled to the containment layer and an interior layer coupled to the distribution layer comprising a non-woven liquid permeable layer as set forth in col. 2, line 55 to col. 3, line 4.

The difference between Reiss and claim 1 is the provision that the core layer is made of a non-chlorine bleached material.

Cook et al. (hereinafter "Cook") teaches a non-chlorinated bleached wood pulp as set forth in the abstract and in col. 5, line 63 to col. 6, line 3.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a non-chlorinated bleached wood pulp because it is well known in the art that wood pulp may be bleached in order to achieve brightness and increase consumer appeal as taught by Cook in col. 5, lines 62 – 63.

Likewise, it is well known in the art that the use of elemental chlorine as a bleaching agent has decreased because it is difficult to handle and potentially hazardous to both the mill personnel and equipment. Additionally, the use of chlorine as a bleaching agent has decreased due to the concern expressed by the United States Environmental Protection Agency that the element might be toxic to humans and animals.

As to claims 2, Reiss discloses a diaper further comprising a leakage protection layer coupled to the exterior layer for preventing waste material from leaking out of the disposable diaper as set forth in figure 3.

As to claim 3, see the rejection of claim 1.

Regarding claims 4, 10 and 16, Reiss discloses a disposable diaper having a multi-layered diaper assembly wherein the core layer further comprises a superabsorbent mixture as set forth in col. 4, lines 29 – 41.

With respect to claims 5 – 6, 8, 11 – 12, 14, 17 – 18 and 20, the examiner contends that it would have been obvious to one of ordinary skill in the art to modify the exterior layer to provide the claimed materials because the use of such materials is well known in the art.

As to claims 7, 13 and 18, see the rejection of claim 1.

With reference to claim 9, Reiss in view of Cook disclose a chlorine free disposable diaper having a multi-layered diaper assembly comprising: an exterior layer comprising a non-woven material having a planar, soft, cloth-like surface layer; a leakage protection layer coupled to the exterior layer for preventing waste material

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from leaking out of the disposable diaper; a core layer made of non-chlorine bleached wood pulp for holding the waste materials within the disposable diaper; a containment layer coupled to a first side and a second side of the core layer for containing the waste material in the core layer and away from skin of a wearer; a distribution layer coupled to the containment layer for evenly distributing waste material to the core layer; and an interior layer coupled to the distribution layer comprising a non-woven liquid permeable material as set forth in the rejection of claim 1.

As to claim 15, Reiss in view of Cook disclose a method of providing a chlorine free disposable diaper having a multi-layered diaper assembly comprising: forming an exterior layer comprising a non-woven material having a planar, soft, cloth-like surface layer; coupling a leakage protection layer to the exterior layer for preventing waste material from leaking out of the disposable diaper; forming a core layer made of non-chlorine bleached wood pulp for holding the waste materials within the disposable diaper; coupling a containment layer to a first side and a second side of the core layer for containing the waste material in the core layer and away from skin of a wearer; coupling a distribution layer to the containment layer for evenly distributing waste material to the core layer; and coupling an interior layer to the distribution layer comprising a non-woven liquid permeable material as the method would necessarily flow from the apparatus as disclosed in the rejection of claim 1.

Response to Arguments

Applicant's arguments filed November 21, 2006 have been fully considered but they are not persuasive.

The examiner finds that the applicant's arguments are not applicable to the pending rejection. The applicant refers to MPEP 706.02(I)(1) regarding the disqualification of prior art under 35 U.S.C. 103 via 35 U.S.C. 102(e) and states that both the instant application and Reiss et al. (US 5,743,895) were commonly assigned. However, Reiss is not disqualified because the publication date of Reiss is more than one year prior to the effective filing date of the instant application, thereby preventing Reiss from being applied under 35 U.S.C. 103 via 35 U.S.C. 102(e) as argued..

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Michele Kidwell
Primary Examiner
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